

APPENDIX
SUPPLEMENTARY SUBMISSION BY DEMOCRACY WATCH
IN RESPONSE TO LOOPHOLES ADDED RECENTLY TO *MPs Code*

A. MPs meet in secret to create two loopholes in the *MPs Code* -- loopholes must be closed

Through in-camera, off-the-record meetings in the past few months (with Ethics Commissioner Mary Dawson participating), leading to a report filed in the House of Commons in early June, the House of Commons Standing Committee on Procedure and House Affairs, and its Subcommittee on Gifts under the *Conflict of Interest Code for Members of the House of Commons* (SCOD - *MPs Code*), concluded that two loopholes should be created in the *MPs Code*.

The Committee's report was adopted unanimously by the House of Commons, and as a result the *MPs Code* has been amended to add the loopholes. These changes were made just after Democracy Watch filed its submission with the Oliphant Commission on June 4, 2009.

The first loophole is that the definition of "benefit" in the *MPs Code* is changed to exempt "a benefit received from a riding association or a political party." This loophole means that any riding association or political party can offer any MP money, property or services in return for the MP changing their decisions or actions as an MP, and such transactions will not have to be reported to the Ethics Commissioner nor the public, nor (even if the public could file complaints about violations of the *MPs Code* with the Ethics Commissioner and have them ruled on) will the Commissioner have jurisdiction to consider complaints about such transactions.

This loophole gives political parties and their leaders another way in which to ensure the loyalty of members of their caucus (adding to their current powers to appoint election candidates, and appoint committee chairs and members, and provide funding for election and by-election campaigns), a development that further decreases the independence of MPs.

Even worse, this loopholes legalizes political parties offering benefits, in secret, to the MPs of other parties to induce them to switch parties or the way they vote on any matter.

As a result of this new loophole in the *MPs Code*, Democracy Watch makes the following recommendations:

Recommendation 62 (supplementary): The definition of "benefit" in the *MPs Code* must be changed to allow political parties and riding association only to provide to their own MPs, in secret, the benefit of paying the travel and accommodation costs of attending their party's events.

Recommendation 63 (supplementary): In section III.A above (p.15), it is stated that "Democracy Watch's position is that there are no loopholes in the bribery etc. provisions (sections 119 to 128) that apply to public officials that

are contained in Part IV of the *Criminal Code of Canada*.” However, given the June 2009 change to the *MPs Code* that exempts from the conflict of interest rules any benefit provided by political parties or riding associations to MPs, Democracy Watch’s position has changed. It is very clear that this change means that the word “corruptly” in clause 119(1)(a) and (b) of the *Criminal Code* must be defined. The word “corruptly” should be defined to make it clear that, despite the change to the definition of “benefit” in the *MPs Code*, it is corrupt for a political party or riding association to offer a benefit to an MP in return for the MP doing or omitting to do anything in the MP’s official capacity. This definition of “corruptly” should also be referenced in the changes to the *Canada Elections Act* set out in recommendation 45 above (section III.E, pp. 39-40) to ban political parties and riding associations from maintaining secret trust funds (that could be used to give retiring party leaders or MPs money, property or services).

The second loophole is that the definition of “benefit” in the *MPs Code* is changed to exempt “a service provided by a volunteer working on behalf of a Member.” This loophole means that a lobbyist who is lobbying an MP can provide unlimited volunteer services to the MP, in secret, without ever any creating any conflict of interest (and therefore is outside the scope of the Ethics Commissioner).

Proposed above in section III.C is recommendation 24: “Lobbyists must be clearly prohibited from working directly or indirectly, paid or volunteer, with government or opposition political parties, and in senior positions with political parties, riding associations or candidates.” The words “senior positions” are used to indicate that lobbyists can do some things for parties, riding associations and candidates (nominal volunteer tasks such as stuffing envelopes once or twice a year), but should be prohibited from doing anything significant, because that creates a conflict of interest (as the Federal Court of Appeal ruled in March 2009 in *Democracy Watch v. Barry Campbell and the Attorney General of Canada (Registrar of Lobbyists)* 2009 FCA 79).

The change to the *MPs Code* directly contradicts both the above recommendation and the Federal Court of Appeal ruling. To prevent lobbyists from obtaining undue, undemocratic and unethical influence through providing volunteer services to MPs, Democracy Watch recommends:

Recommendation 64 (supplementary): The definition of “benefit” in the *MPs Code* must be changed to include any service the market value of which would be more than \$500 annually provided by anyone (whether or not they are registered under the *Lobbying Act*) who is participating in an organized or dedicated effort to lobby the federal government, to ensure that lobbyists cannot use the provision of such volunteer services as a means of gaining unethical influence over MPs.